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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: Dempski et al.

Appln. No.: 09/924,669

Filed: August 8, 2001

For: Enhanced Custom Content  
Television

Attorney Docket No: 10022/142

Examiner: Sumaiya A. Chowdhury

Art Unit: 2421

Confirmation No.: 3664

### APPEAL BRIEF

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellant has filed this Appeal Brief in response to the Final Office Action mailed June 23, 2008 with the appropriate fee in accordance with 37 C.F.R. § 41.37 and § 41.20(b)(2).

**I. REAL PARTY IN INTEREST**

The real party in interest is Accenture Global Services GmbH, a corporation having a place of business in Schaffhausen, Switzerland.

**II. RELATED APPEALS AND INTERFERENCES**

The undersigned is unaware of any other appeals or interferences that will directly affect, be directly affected by or have any bearing on the Board's decision in the pending appeal.

**III. STATUS OF THE CLAIMS**

1. Claims 1, 4, 7-8, 10-11, 13-15, 17-20, 37-38, 40, 42-43, 45-46, 48-49, and 52 are currently pending.

2. Claims 2-3, 5-6, 9, 12, 16, 21-36, 39, 41, 44, 47, and 50-51 have been canceled.

3. The Notice of Panel Decision from Pre-Appeal Brief Review mailed January 14, 2009 indicates that claims 1, 4, 7-8, 10-11, 13-15, 17-20, 37-38, 40, 42-43, 45-46, 48-49, and 52 stand rejected.

4. All of finally rejected claims 1, 4, 7-8, 10-11, 13-15, 17-20, 37-38, 40, 42-43, 45-46, 48-49, and 52 are appealed.

**IV. STATUS OF AMENDMENTS**

No amendments are pending.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The present application generally relates to a system and method for integrating television broadcast programming content with customized or personalized information and educational or entertainment content during the broadcast advertising segments.

**A. INDEPENDENT CLAIM 1**

Independent claim 1 recites a method for enhancing a television broadcast program that includes receiving a television signal that includes a television broadcast program and a television broadcast advertisement (p. 5, ll. 10-22), receiving replacement advertising data that represents executable instruction sets for rendering a first animated video replacement advertising segment (p. 8, ll. 6-8; p. 8, ll. 14-19), blocking the display of the television broadcast advertisement (p. 8, ll. 20-23), and displaying the rendered first animated video replacement advertising segment instead of the television broadcast advertisement (p. 8, ll. 20-23). Claim 1 is also directed to determining whether the television broadcast program has resumed after the television broadcast advertisement has ended, and, when the first replacement advertising segment has not ended and the television broadcast program has resumed, storing the television broadcast program from a beginning point, and then displaying the television broadcast program from the beginning point (p. 7, ll. 6-31; p. 20, ll. 6-11).

Claim 1 further includes developing a viewer profile based on viewer interaction with the first replacement advertising segment. Claim 1 recites that developing a viewer profile includes displaying modifications for modifying the first replacement advertising segment, modifying the first replacement advertising segment with selected modifications, storing the selected modifications, and then automatically applying the selected modification to a second replacement advertising segment that is received after the first replacement advertising segment. (pp. 9-10, ll. 21-6).

**B. INDEPENDENT CLAIM 11**

Independent claim 11 recites a method for enhancing a television broadcast program that includes receiving programming data that represents synchronization data for a plurality of sequential program segments in a television broadcast program (pp. 16-17, ll. 29-6), synchronizing a first replacement segment with one of the received plurality of television broadcast segments (pp. 16-17, ll. 29-6), blocking the display of a television broadcast segment (p. 2, ll. 9-19), and displaying a selected replacement segment on a television display instead of the synchronized television broadcast

segment (p. 16, ll. 10-28). Claim 11 is also directed to determining whether the next sequential program segment has started after the blocked television broadcast segment has ended, and, when replacement segment has not ended but the next sequential program segment has started, storing the next sequential program segment from a beginning point, and then displaying the next sequential program segment from the beginning point (p. 7, ll. 6-31; p. 20, ll. 6-11).

Claim 11 further includes developing a viewer profile based on viewer interaction with the first replacement segment. Claim 11 recites that developing a viewer profile includes displaying modifications for modifying the first replacement segment, modifying the first replacement segment with selected modifications, storing the selected modifications, and then automatically applying the selected modification to a second replacement segment that is received after the first replacement segment (pp. 9-10, ll. 21-6).

### **C. INDEPENDENT CLAIM 37**

Independent claim 37 recites a system for displaying enhanced television broadcast programs that includes a multimedia controller, a video display monitor, and a manual input device (p. 8, ll. 1-11). The multimedia controller is operative to determine determining whether a television broadcast program has resumed after a television broadcast advertisement has ended, and, when a first replacement advertising segment has not ended and the television broadcast program has resumed, storing the television broadcast program from a beginning point, and then displaying the television broadcast program from the beginning point (p. 7, ll. 6-31; p. 20, ll. 6-11).

Claim 37 further recites that the multimedia controller is operative to develop a viewer profile based on viewer interaction with a first replacement advertising segment. Claim 37 recites that developing a viewer profile includes displaying modifications for modifying the first replacement advertising segment, modifying the first replacement advertising segment with selected modifications, storing the selected modifications, and then automatically applying the selected modification to a second replacement

advertising segment that is received after the first replacement advertising segment. (pp. 9-10, ll. 21-6).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

1. Whether claims 1, 4, 7-8, 10-11, 13-15, 17-20, 37, 40, 42, 45-46, 48-49, and 52 are unpatentable under 35 U.S.C. § 103(a) over CA 2,387,386 to Akiyama *et al.* ("Akiyama") in view of U.S. Pat. No. 7,020,888 to Reynolds *et al.* ("Reynolds"), U.S. Pat. No. 7,159,232 to Blackketter *et al.* ("Blackketter"), U.S. Pat. App. Pub. No. 2002/0063714 to Haas *et al.* ("Haas"), and U.S. Pat. No. 6,698,020 to Zigmond *et al.* ("Zigmond").

## **VII. ARGUMENT**

An obviousness analysis includes an assessment of the scope and content of the prior art. (*Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966)). Obviousness is a legal conclusion based on underlying factual inquiries. The factual inquiries include: (1) the scope and content of the prior art; (2) the level of ordinary skill in the art; (3) the differences between the claimed invention and the prior art; and (4) objective evidence of nonobviousness. (*Graham*, 383 U.S. at 17-18). All words in a claim must be considered in judging the patentability of that claim against the prior art. (*In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). To establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art. (*In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)).

### **A. The Combination of Akiyama, Reynolds, Blackketter, Haas, and Zigmond Does Not Teach or Suggest All of the Features of Independent Claims 1, 11, and 37**

The Final Office Action asserts that independent claims 1, 11, and 37 are obvious over Akiyama in view of Reynolds, Blackketter, Haas, and Zigmond. Appellant respectfully submits that there is a clear factual error in the Final Office Action because neither Akiyama nor Zigmond teach or suggest the features relied upon by the Final Office Action.

**1. Akiyama Does Not Teach or Suggest “Determining Whether the Television Broadcast Program has Resumed After End of the Television Broadcast Advertisement” or “Determining Whether a Next Sequential Program Segment in the Television Broadcast Program has Commenced After End of the Blocked Television Broadcast Segment.”**

With respect to Akiyama, the Final Office Action relies on this reference for teaching the feature recited by independent claim 1 of “determining whether the television broadcast program has resumed after end of the television broadcast advertisement” and the feature recited by independent claim 11 of “determining whether a next sequential program segment in the television broadcast program has commenced after end of the blocked television broadcast segment.” The Final Office Action similarly relies on Akiyama for teaching the feature recited by independent claim 37 of a multimedia controller operative “to determine whether the television broadcast program has resumed after the end of the television broadcast advertisement.” (See Final Office Action, pp. 3, 10, 19). Assignee respectfully submits that there is a clear factual error in the Final Office Action because Akiyama does not teach or suggest these features.

In the embodiment of Akiyama relied upon by the Final Office Action, Akiyama explains that a selective display process is responsible for replacing a commercial originating from a tuner with a commercial originating from a hard disk memory. During the selective display process, a CF code for a commercial is determined from an advertiser/commercial table based on a viewer's attribute. (See Akiyama, p. 26, ll. 23-27). After determining the CF code for the replacement commercial, the selective display process waits for a timer interrupt to occur. When the timer interrupt occurs, the selective display process activates a switcher to read the commercial with the selected CF code from the hard disk memory. The commercial with the selected CF code is then sent to a decoder for decoding and selective display process effectively replaces the commercial originating from the tuner.

The selective display process in Akiyama does not determine whether a television broadcast program has resumed after the end of the replacement commercial. Akiyama explains that the selective display process waits for the content of the replacement commercial to be read out. When the selective display processes finishes the readout of

the replacement commercial, the selective display process sets the switcher back to an original state, and re-establishes the path between the tuner and the decoder, such that the television broadcast program is displayed at its current scheduled broadcast point. (Akiyama, p. 27, ll. 6-10). Thus, there is no need for the system of Akiyama to determine whether a television broadcast has resumed because the switcher is automatically set back when the replacement commercial is complete. In claim 1, the step of "determining whether the television broadcast program has resumed after end of the television broadcast advertisement" addresses that the resumed program may be stored if the first replacement advertising segment has not ended. The selective display process of Akiyama focuses on the duration of the replacement commercial and does not focus on whether the broadcast of the original television programming has resumed or whether the broadcast commercial is still continuing.

Accordingly, Akiyama does not teach or suggest the features of claims 1, 11, and 37 as asserted by the Final Office Action.

Moreover, an Advisory Action mailed October 9, 2008 is clearly wrong to assert that the "user determines that a TV program resumes," and that this assertion discloses the claimed limitation. Akiyama provides no such teaching as it relies on replacement advertising segments of identical length as the broadcast advertising segments where the user is a passive observer. For example, Akiyama shows that a data structure of a program table has a televising time field, and that this televising time stores a predetermined televising time. (Akiyama, Figure 8; Akiyama, pp. 22-23). The predetermined televising time is associated with a content code that identifies whether the content associated with the televising time is programming content or advertising content. Because the display of the programming content is dependent on the display of advertising content ending at a predetermined time, Akiyama relies on a replacement advertising segment having the same length as the broadcast advertising segment. As such, in the system of Akiyama, the replacement advertising segment cannot overlap with the resumed broadcast program. A user of Akiyama is merely a passive viewer of content. Akiyama does not teach or suggest that a user makes determinations as to whether a television broadcast program has resumed after end of the television broadcast

advertisement when a replacement advertising segment has not yet ended – because such an occurrence is not possible in the precisely timed replacement advertising system of Akiyama. Accordingly, any passive observation of the resumption of a broadcast program in Akiyama does not teach or suggest the active features recited by claims 1 and 11. Hence, the Advisory Action is clearly wrong to assert that Akiyama discloses the claimed features of claims 1 and 11.

**2. Zigmond Does Not Teach or Suggest “Retaining the Viewer Selection of the at Least One Modification to the First Replacement Advertising Segment as Part of the Viewer Profile”**

Second, with respect to Zigmond, the Final Office Action relies on this reference for teaching features recited by independent claims 1, 11, and 37 directed to developing a viewer profile. However, there is clear factual error in this reliance. In particular, the Final Office Action asserts that Zigmond teaches “retaining the viewer selection of the at least one interaction with the first replacement advertising segment.” (See Final Office Action, pp. 8, 15, 24) (emphasis added). However, the claims are not directed to “interactions,” but are directed to “modifications” of a first replacement advertising segment. Zigmond does not teach or suggest these features.

Zigmond is generally directed to methods and systems for inserting advertisements or other video or visually displayed objects into video programming feeds at the household level. According to Zigmond, these methods allow advertisers to target individual viewers based on the needs and interests of individual viewers and households. (Zigmond, col. 4, ll. 7-12). In one embodiment, Zigmond discusses a viewer monitoring feature that monitors viewer interactions with an advertisement. (Zigmond, col. 9, ll. 20-22). In this embodiment, the viewer monitoring feature monitors viewer actions and responses such as channel changes during the display of an advertisement, feedback provided by the viewer, or an advertisement selection when the viewer is presented with multiple advertisements. (Zigmond, col. 9, ll. 22-37). Zigmond explains that the viewer actions may be collected as part of statistics collection or may be used to modify the advertisement selection process. (Zigmond, col. 9, ll. 39-55).



In contrast to independent claims 1, 11, and 37, Zigmond primarily focuses on monitoring viewer responses to an advertisement. As discussed above, Zigmond monitors viewer responses relating to an advertisement, such as whether the viewer changes the channel or provides feedback for an advertisement, but Zigmond does not monitor modifications to an advertisement. Changing the channel on which an advertisement is displayed does not modify the advertisement, but changes the channel itself. Moreover, Zigmond does not describe automatically applying a previously retained viewer selection of at least one modification to a second replacement advertising segment that is received after the first replacement advertising segment. Modifying the selection process for selecting an advertisement does not make obvious modifying the advertisement itself, which is what is recited by the claims. Accordingly, Zigmond does not teach or suggest the features of claims 1, 11, and 37 as asserted by the Final Office Action.

Therefore, Akiyama, Reynolds, Blackketter, Haas, and Zigmond, in any combination, do not teach or suggest all the features of independent claims 1, 11, and 37. Thus, the presently pending independent claims are allowable over the cited references. As the independent claims are allowable over the cited references, the claims that depend therefrom are also patentable. Accordingly, Appellant respectfully requests that the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

## **Conclusion**

Appellant respectfully submits that the Final Office Action has failed to show that independent claims 1, 11, and 37 are unpatentable over any combination of Akiyama, Reynolds, Blackketter, Haas, and Zigmond. As independent claims 1, 11, and 37 are patentable over these references, the claims that depend therefrom are also patentable. Appellant therefore requests reversal of all of the pending rejections asserted in the Final Office Action.

Respectfully submitted,

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## VIII. CLAIMS APPENDIX.

1. (Previously presented) A method for enhancing a television broadcast program comprising:

(a) receiving a signal, the signal comprising a television broadcast program and a television broadcast advertisement for display during a break in the television broadcast program;

(b) receiving replacement advertising data from a first memory storage, the advertising data comprising an executable instruction set for rendering a first animated video replacement advertising segment by a client processor;

(c) selecting the first replacement advertising segment based on a viewer profile;

(d) rendering on the client processor the first animated video replacement advertising segment by executing the executable instruction set;

(e) blocking the display of the television broadcast advertisement, such that the television broadcast advertisement is not displayed;

(f) displaying the first animated video replacement advertising segment instead of the television broadcast advertisement on a television display;

(g) determining whether the television broadcast program has resumed after end of the television broadcast advertisement, determining whether the first replacement advertising segment has ended, and if the first replacement advertising segment has not ended, storing the resumed television broadcast program on a storage device from a beginning point, and displaying the resumed broadcast program from the beginning point;

(h) displaying the resumed television broadcast program after completion of the animated video replacement advertising segment; and,

(i) developing the viewer profile based on viewer interaction with the first replacement advertising segment, where developing the viewer profile includes:

displaying an on-screen query of optional modifications to the first replacement advertising segment;

receiving a viewer selection of at least one modification to the first replacement advertising segment;  
rendering the at least one modification to the first replacement advertising segment; and,  
retaining the viewer selection of the at least one modification to the first replacement advertising segment as part of the viewer profile; and,  
(j) automatically applying the previously retained viewer selection of the at least one modification to a second replacement advertising segment that is received after the first replacement advertising segment.

2-3. (Canceled).

4. (Previously presented) The method of claim 1 further comprising creating the viewer profile based on a set of preferences selected by the viewer.

5-6. (Canceled).

7. (Previously presented) The method of claim 1 wherein said modifications comprise color, component in displayed objects, viewing perspective, zoom, play-back speed, background audio sound track, and special effects.

8. (Previously presented) The method of claim 1 wherein said modifications are accompanied by computer-generated special effects.

9. (Canceled).

10. (Previously presented) The method of claim 1, further comprising providing a plurality of audio accompaniments to the first advertising segment, and selecting the audio accompaniment based either on the viewer profile or on the music used most by

the viewer on their set-top box or personnel music catalog on a storage device external to the set-top box.

11. (Previously presented) A method for enhancing a television broadcast program comprising:

- (a) receiving programming data representing synchronization data for a plurality of sequential program segments in a television broadcast program;
- (b) receiving information related to a plurality of replacement program segments;
- (c) selecting a first replacement segment based on a viewer profile;
- (d) synchronizing the first replacement segment with one of said plurality of television broadcast segments;
- (e) receiving executable instruction sets for generating the selected replacement segments, and rendering on a local processor the selected first replacement segment by executing the executable instructions sets
- (f) blocking the display of the television broadcast segment;
- (g) displaying the selected first replacement segment on a television display in place of the synchronized television broadcast segment;
- (h) determining whether a next sequential program segment in the television broadcast program has commenced after end of the blocked television broadcast segment, determining whether the selected first replacement segment has ended, and if the selected first replacement segment has not ended, storing the next sequential program segment on a storage device from a beginning point, and displaying the next sequential segment from the beginning point after the selected first replacement segment has ended; and,
- (i) developing the viewer profile based on viewer interaction with the replacement segment; where developing the viewer profile includes:
  - displaying an on-screen query of optional modifications to the first replacement advertising segment;

receiving a viewer selection of at least one modification to the first replacement advertising segment;

rendering the at least one modification to the first replacement advertising segment; and,

retaining the viewer selection of the at least one modification to the first replacement advertising segment as part of the viewer profile; and,

(j) automatically applying the previously retained viewer selection of the at least one modification to a second replacement advertising segment that is selected after the first replacement advertising segment.

12. (Canceled).

13. (Previously presented) The method of claim 11, further comprising developing the viewer profile based on past selections of replacement segments.

14. (Previously presented) The method of claim 11 further comprising developing the viewer profile based on a set of preferences selected by the viewer.

15. (Previously presented) The method of claim 11 further comprising augmenting the viewer preferences based on the viewer's past selection of fast-forwarding or skipping through selected segments.

16. (Canceled).

17. (Previously presented) The method of claim 11, wherein the executable instruction sets for generating an advertising segment comprise executable programming code for rendering into an animated video segment by a client processor.

18. (Previously presented) The method of claim 11, further comprising displaying an on-screen query of optional replacement segments, and selecting the desired replacement segments in response to a command received from the viewer.

19. (Previously presented) The method of claim 11, wherein the programming data is received from data encoded with television broadcast program, from an electronic programming guide or from an internet server.

20. (Previously presented) The method of claim 11 wherein the data representing the selected replacement segments comprise geometry and texture data for use with the executable instruction sets for rendering into an animated video segment by a client processor.

21-36 (Canceled).

37. (Previously presented) A system for displaying enhanced television broadcast programs comprising:

a multimedia controller having:

a first memory storage for storing viewer profiles,

a television broadcast signal tuner receiver,

a communication port in communication with external sources of replacement advertising data, the advertising data comprising executable instruction sets for rendering a first animated video replacement advertising segment, the first animated video replacement advertisement being selected based on a viewer profile stored in the first memory storage,

a second memory storage for storing a television broadcast signal, the television broadcast signal comprising a television broadcast program and a television broadcast advertisement for display during a break in the television broadcast program,

a third memory storage for storing the replacement advertising data,

a processor capable of rendering the first animated video replacement advertising segment by executing the executable instruction sets in the replacement advertising data and further capable of blocking the display of the television broadcast advertisement, such that the television broadcast advertisement is not displayed,

a video display monitor in communication with the multimedia controller, the video display monitor configured to display the television broadcast program and the first animated video replacement advertising segment during a break in the television broadcast program; and

a manual input device in communication with the multimedia controller, wherein:

the multimedia controller is further operative to determine whether the television broadcast program has resumed after the end of the television broadcast advertisement, to determine whether the first replacement advertising segment has ended, and if the first replacement advertising segment has not ended, to store the resumed television broadcast program on the first memory storage from a beginning point, and to display the resumed broadcast program from the beginning point; and,

the multimedia controller is further operative to develop the viewer profile based on viewer interaction with the first animated video replacement advertising segment based on:

the video display monitor being further operative to display an on-screen query of optional modifications to the first animated video replacement advertising segment;

the manual input device being further operative to receive a viewer selection of at least one modification to the first animated video replacement advertising segment;



the processor being further operative to render the at least one modification to the first animated video replacement advertising segment; the first memory storage being further operative to retain the viewer selection of the at least one modification to the first animated video replacement advertising segment as part of the viewer profile used in selecting the first animated video replacement advertising segment; and, the processor being further operative to automatically render the at least one previously received modification retained by the first memory storage to a second animated video replacement advertising segment that is selected after the first animated video replacement advertising segment.

38. (Original) The system of claim 37 further comprising a personal computer in communication with the multimedia controller.
39. (Canceled).
40. (Original) The system of claim 37 further comprising a fourth memory storage for storing television broadcast programs in digitized format for later recall and display.
41. (Canceled).
42. (Original) The system of claim 37 wherein the manual input device comprises a mouse, a joystick, a keyboard or a remote control.
43. (Original) The system of claim 42 wherein the remote control comprises a personal digital assistant having an infrared transceiver for communication with the multimedia controller, said personal digital assistant having a configurable display on a touch sensitive screen, said configurable display being configured to correspond to the active selections available to a user for a given images on the video display monitor.

44. (Canceled).

45. (Previously presented) The method of claim 1, where viewer interaction comprises applying a modification selected by the viewer to the first replacement advertising segment.

46. (Previously presented) The method of claim 1, where viewer interaction occurs during the display of the first animated video replacement advertising segment.

47. (Canceled).

48. (Previously presented) The method of claim 11, where viewer interaction comprises applying a modification selected by the viewer to the first replacement segment.

49. (Previously presented) The method of claim 11, where viewer interaction occurs during the display of the first replacement segment.

50-51. (Canceled).

52. (Previously presented) The system of claim 37, where the processor is further configured to render a modification to the first animated video replacement advertising segment during viewer interaction with the first animated video replacement advertising segment.

**IX. EVIDENCE APPENDIX.**

None.

**X. RELATED PROCEEDINGS APPENDIX.**

None.